IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CR No. 180 of 2002.

Date of Decision: 21.9.2007

Amrit Lal … Petitioner

Versus

Vishwa Mittar Gupta (dead)
LRs B.L.Gupta … Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioner(s) : Mr. Bhupender Gupta, Sr. Advocate
With Mr. A.P.S.Jaswal, Advocate.

For the Respondent(s) : Mr Atul Jhingan, Advocate.

Deepak Gupta, J. (Oral).

This revision petition has been filed by the tenant/petitioner challenging the order dated 4.5.2002 passed in Rent Appeal No. 30-S/14 of 1997 whereby the learned Appellate Authority has allowed the appeal of the landlord and ordered the eviction of the tenant by holding that the premises in dispute are required by the landlord for his bonafide personal use and occupation and for repair which could not be effected without evicting the tenant from the premises.

Shri Vishwamittar Gupta, predecessor-in-interest of the present respondent filed a petition under Section 14 of the H.P. Urban Rent Control Act for eviction of the petitioner-tenant. The eviction petition was filed on various grounds i.e. arrears of rent; personal bonafide

requirement; repair of the building which could not be carried out without eviction of the tenantand construction of own house by the tenant in the urban area which was sufficient for his own use and occupation. The learned Rent Controller held that the tenant was in arrears of rent and ordered his eviction on this ground only and rejected all other pleas raised by the landlord.

The tenant deposited the arrears of rent within the time stipulated and could not be evicted on this ground. The landlord filed an appeal before the learned appellate authority. During the pendency of the appeal an application under Order 41 rule 27 CPC was filed before the learned appellate authority praying that the condition of the building has become worse during the pendency of the case and seeking permission to place on record certain photographs, map and technical report of the building. The learned appellate authority felt that to appreciate this contention, it was necessary to appoint a Local Commissioner and accordingly Shri R.K.Garg, Advocate, was appointed as Local Commissioner to visit the spot and submit his report. The Local Commissioner filed his report. Objections to the report were filed which were rejected and thereafter the learned appellate authority passed the impugned judgment.

The appellate authority while holding that the premises in dispute are required for personal bona fide requirement for effecting repairs, placed heavy reliance on the report of the Local Commissioner. In my opinion, no reliance could be placed on such a report. It would be pertinent to mention that in the building owned by the landlord wherein the demised premises are situate, a number of

tenants occupied different portions of the building. The landlord had filed petitions against other tenants also and from the evidence led on record, I find that the landlord had filed appeal being CMA No.21-S/14 of 1992, decided on 13.10.1992 titled ***Vishwamittaar Gupta v. Smt. Bhagwati Khanna***, challenging the order of the Rent Controller , Solan. In that case also the landlord sought the eviction of the premises on the grounds of personal bonafide requirement and arrears of rent. The learned landlord in that case was represented by Shri R.K.Garg, Advocate. The certified copy of the judgment of this case is Ex.RX-1. Shri R.K.Garg, was the Advocate of the landlord in these proceedings. It was his bounden duty to have pointed out to the learned appellate authority that there may be conflict of interest and he should not have consented to be the local commissioner. Despite clearly knowing that the landlord is his client, Shri R.K.Garg acted as a Local Commissioner. This in itself casts doubt on the veracity of the report of the Local Commissioner. In my opinion, no reliance could have been placed on this report.

As far as personal bonafide requirement of the landlord is concerned, during the course of the proceedings, the landlord has expired. Whether his son who has succeeded him requires the demised premises for bonafide requirement or not is a matter that requires to be considered.

It would be pertinent to mention that the learned appellate authority in para 23 has come to the conclusion that the wife of the tenant has constructed a double storeyed house and that the wife and the tenant reside together. The appellate authority held that he is of the view that the respondent is having sufficient

accommodation for his own use and occupation. However, in the operative part of the judgment, eviction of the tenant has not been ordered on this ground. In fact the appellate authority has only ordered the eviction of the tenant on the ground of personal bonafide requirement of the landlord and not for banafide need to repair the premises in question. No order of eviction has been passed on the ground that the tenant has acquired/constructed his own house in the urban area concerned which is sufficient for his own use and occupation.

Keeping in view the aforesaid facts, I am of the view that the order of the learned appellate authority suffers from various defects and the only option is to remand the case to the appellate authority for deciding the matter afresh. Consequently the revision petition is allowed and the order dated 4.5.2002 passed by the appellate authority is accordingly set aside and the matter is remanded to the learned appelate authority who shall register the appeal on its original number and decide the matter at the earliest.

The parties through their counsel are directed to appear before the learned appellate authority on 29.10.2007. Since the matter is very old, the learned appellate authority shall decide the matter at the earliest and in any event not later than 30.4.2008. Any party desirous of having a local commissioner appointed or wanted to bring on record subsequent events or wanting to lead additional evidence must move an application in this behalf before the learned appellate authority latest by 15.11.2007. No application in this regard shall be entertained after the said date. If such an application is moved, the appellate authority shall hear and decide the same at the earliest. In case the

appellate authority comes to the conclusion that fresh evidence is required or local commissioner has to be appointed, he shall not remand the case to the learned Rent Controller but shall hear the case himself and shall call for the report from the local commissioner himself. The matter, in any event, shall not be adjourned after 30.4.2008.

The revision petition is disposed of in the aforesaid terms. No order as to costs.

September 21, 2007. (Deepak Gupta), J.

s.